

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PETER JASON HELFRICH,

Plaintiff,

v.

STATE OF NEVADA et al.,

Defendants.

Case No. 2:16-cv-01323-RFB-NJK

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On November 16, 2016, this Court issued an order denying Plaintiff's application to proceed *in forma pauperis* because Plaintiff had "three strikes" pursuant to 28 U.S.C. § 1915(g). (ECF No. 6 at 1-2). The Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within 45 days from the date of that order, the Court would dismiss the action without prejudice. (*Id.* at 2). The 45-day period has now expired and Plaintiff has not paid the full filing fee of \$400.00.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal

1 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
2 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
3 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
4 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
5 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
6 failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey
8 a court order, or failure to comply with local rules, the court must consider several factors:
9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
10 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
11 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
12 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
13 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket,
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
17 in favor of dismissal, since a presumption of injury arises from the occurrence of
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
19 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
20 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
21 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
22 the court's order will result in dismissal satisfies the "consideration of alternatives"
23 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
24 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing fee within 45 days
25 expressly stated: "IT IS FURTHER ORDERED that this action will be dismissed without
26 prejudice unless Plaintiff pays the \$400.00 filing fee in full within forty-five (45) days from
27 the date of this order." (ECF No. 6 at 3). Thus, Plaintiff had adequate warning that
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1 dismissal would result from his noncompliance with the Court's order to pay the full filing
2 fee within 45 days.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's November
5 16, 2016, order.

6 It is further ordered that the Clerk of Court shall enter judgment accordingly.
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8 DATED THIS 26th day of February, 2017.
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11 RICHARD F. BOULWARE, II
12 UNITED STATES DISTRICT JUDGE
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